

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

v.

DETREX CORPORATION,

Defendant.

CIVIL ACTION NO.

**CONSENT DECREE**

## CONSENT DECREE

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## **I. BACKGROUND**

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this matter seeking civil penalties and injunctive relief pursuant to the Clean Water Act, 33 U.S.C. § 1251 et seq. (the “CWA”), relating to the operation by Defendant Detrex Corporation (“Defendant”) of its chemical manufacturing plant in Ashtabula, Ohio (the “Facility”).

B. The Complaint alleges, inter alia, that Defendant violated the CWA, and its National Pollutant Discharge Elimination System permit (“NPDES Permit”) issued pursuant to the CWA, by causing unpermitted discharges of certain pollutants including total suspended solids, oil and grease, pH, ammonia-nitrogen, total residual chlorine, carbonaceous biochemical oxygen demand, total filterable residue, fecal coliform, methylene chloride, and chloroform and metals, including silver, copper, mercury, and zinc, into the tributary of Fields Brook, which flows into the Ashtabula River, contrary to Defendant’s NPDES Permit and 33 U.S.C. §§ 1311 and 1342.

C. The Complaint further alleges that Defendant violated the CWA, and its NPDES Permit issued pursuant to the CWA, by failing to comply with certain monitoring and reporting requirements governing effluent characteristics for specified pollutants discharged by the Facility into the tributary of Fields Brook, which flows into the Ashtabula River, as established by Defendant’s NPDES Permit.

D. It is the purpose of the parties entering into this Consent Decree to assure compliance with the provisions of Defendant’s NPDES Permit and the CWA that Plaintiff has alleged in its Complaint that Defendant has violated.

E. Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

F. The parties to this Consent Decree recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the parties in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the parties, and that this Consent Decree is fair, reasonable, consistent with applicable law, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1331, 1345, and 1355. This Court also has personal jurisdiction over Defendant. Venue is proper in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c).

2. Solely for the purposes of this Consent Decree and the underlying Complaint, Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

3. This Consent Decree applies to and is binding upon the United States and upon Defendant, its successors and assigns, and its officers, directors, and employees in their capacities as such, and all other persons and entities as provided for by Fed. R. Civ. P. 65(d). In

any action to enforce the terms of this Consent Decree, Defendant shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees or any other persons or entities provided for by Fed. R. Civ. P. 65(d) to take any actions necessary to comply with the provisions hereof.

4. No change in ownership of the Facility (or any portion thereof) shall in any way alter Defendant's obligations or rights under this Consent Decree. Similarly, no change in corporate status or ownership of Defendant shall in any way alter Defendant's obligations or rights under this Consent Decree. Effective from the date of lodging of this Consent Decree, at least 30 days prior to selling or transferring ownership or operation of the Facility (or any part thereof) to any other person, Defendant shall provide a copy of this Consent Decree to such prospective successor owner or operator, and shall simultaneously verify to the United States in writing, in the manner set forth in Section XIII (Notices and Submissions), that a copy of the Consent Decree has been provided to such prospective successor owner or operator.

#### IV. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA, or in regulations promulgated thereunder, shall have the meanings assigned to them in such definitions. In addition, the following definitions shall apply to the terms used in this Consent Decree:

"Consent Decree" shall mean this Consent Decree.

"CWA" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., also known as the Clean Water Act.

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“Day” means a calendar day unless expressly stated to be a Working Day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Defendant” means Detrex Corporation.

“EPA” means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Facility” means the chemical manufacturing plant currently owned and operated by Defendant, located at 1100 North State Road, Ashtabula, Ohio.

“Interest” means interest at the rate specified for a money judgment in a civil case recovered in a district court pursuant to 28 U.S.C. § 1961.

“NPDES Permit” means Defendant’s October 8, 1997 National Pollutant Discharge Elimination System permit, No. OH0001872 for the Facility issued pursuant to the CWA, and the June 24, 2002 Amendment thereto, the July 1, 2005 modification to Permit No. OH0001872, as well as any other permit amendment or renewal or new permit issued for the Facility under the CWA.

“OEPA” means the Ohio Environmental Protection Agency.

“Paragraph” means a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” means the United States and the Defendant.

“Plaintiff” means the United States.

“Section” means a portion of this Consent Decree identified by a roman numeral.

“United States” shall mean the United States of America.

## **V. COMPLIANCE MEASURES**

### **6. Compliance Measures.**

a. Installation of Surge Tank to Achieve Compliance. Defendant hereby certifies that, as of the date of Defendant’s execution of this Consent Decree, it has completed construction and commenced operation of a 5,000 gallon surge tank designed to increase the efficiency of the biological treatment system in order to comply with the effluent discharge limitations with respect to Outfall 601 set forth in Defendant’s NPDES Permit. During the effective time period of this Consent Decree, Defendant shall operate the biological treatment system as well as all other treatment systems at its Facility in a manner that ensures consistent compliance with the effluent discharge limitations specified in Defendant’s NPDES Permit

### **b. Compliance Achievement.**

(1) Defendant shall comply with the Facility’s currently applicable NPDES Permit and the Clean Water Act.

(2) Within thirty (30) days of entry of this Decree, Defendant shall submit a CWA Compliance Report, in the manner prescribed by Section XII (Notices and Submissions), that describes in detail: (i) the installation and operation of the new surge tank required by Subparagraph 6.a, and (ii) Defendant’s compliance with all discharge limitations for Facility Outfalls 002, 601, and 602, specified in its NPDES Permit.

## **VI. CIVIL PENALTY FOR PAST VIOLATIONS**

7. Defendant will pay a civil penalty of Two Hundred and Fifty Thousand Dollars (\$250,000) to the United States for the violations enumerated in the Complaint in this action.

a. Payment of the civil penalty shall be made to the United States in four annual installments of Sixty Two Thousand Five Hundred Dollars (\$62,500) plus accrued Interest paid at the statutory rate, 28 U.S.C. 1961 (Treasury coupon rate), with the first payment being due as provided in paragraph 7.b. of this Section and the three subsequent installments becoming due on January 5, or the next business day if it falls on a weekend, of each successive year.

b. Defendant's first installment payment shall be remitted to the United States within thirty (30) days of the entry of this Consent Decree and include any Interest that has accrued from the date this Consent Decree is lodged with the Court to the payment date of the first installment.

c. Payment shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice lockbox bank at the Office of the United States Attorney for the Northern District of Ohio, referencing the DOJ Number 90-5-1-1-08201, and the U.S.A.O. file number. Payment shall be made in accordance with instructions to be provided to Defendant following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Ohio. Any EFTs received at the U.S. D.O.J. lockbox bank after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-08201 and the civil action number of this case) to the United States in accordance with Section XII (Notices and



Submissions)

8. In the event that the payment required by Paragraph 7 is not made in compliance with the terms of Paragraph 7, Defendant shall be subject to late charges by the United States in accordance with the Debt Collection Act of 1982, 31 U.S.C. § 3717 and 40 C.F.R. § 13.11. First, Defendant shall pay Interest on the unpaid balance at the rate established by the Secretary of Treasury pursuant to 31 U.S. § 3717. The Interest on the penalty shall begin to accrue on the 11<sup>th</sup> day following Defendant's receipt of notice of the entry of the Consent Decree, and shall continue to accrue at the rate specified through the date of payment. Such Interest shall be compounded each federal fiscal year. Second, Defendant shall pay a 6% per annum late fee on any principal amount not paid within ninety (90) days of the due date. Third, Defendant shall pay an administrative costs (handling) charge of fifteen dollars (\$15) for each month past the due date specified by the Consent Decree that it does not pay the penalty in full. Payments of Interest, late fees and handling charges made under this Paragraph shall be in addition to stipulated penalties provided in Section VIII (Stipulated Penalties) or any other remedies or sanctions available to Plaintiff by virtue of Defendant's failure to make timely payments under this Section. Payments made pursuant to this Paragraph shall be made in accordance with the procedures set forth in Paragraph 7.

9. Defendant shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

## **VII. EFFECT OF SETTLEMENT AND RESERVATIONS OF RIGHTS**

10. Complete performance by Defendant of all of its obligations under this Consent

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Decree shall fully satisfy all civil liability of Defendant for the violations alleged in the Complaint in this action through the date of entry of the Consent Decree. Nothing in the Consent Decree is intended, or shall be construed, to operate in any way to resolve any other civil liability, or any criminal liability, of Defendant.

11. The United States reserves all rights and remedies, legal and equitable, available to enforce the provisions of this Consent Decree.

12. Nothing herein shall be construed to limit the power of the United States to institute any action against Defendant or any other person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

13. This Consent Decree does not limit or affect the rights of Defendant or the United States against any third parties.

14. Each Party to this action shall bear its own costs and attorney's fees.

15. This Consent Decree is neither a permit nor a modification of existing permits under any federal, state, or local law, and in no way relieves Defendant of its responsibilities to comply with all applicable federal, state, and local laws and regulations.

#### **VIII. STIPULATED PENALTIES**

16. Defendant shall be liable for payment to the United States of the following stipulated civil penalties for noncompliance with the requirements of this Consent Decree occurring after the date of entry of this Consent Decree:

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a. For any failure to comply with an effluent limitation specified by the NPDES Permit.

(1) For a violation of a daily limit:

- (a) \$500 for the first exceedance of a specified effluent limitation at a particular monitoring point;
- (b) \$1,000 for the second exceedance of the same effluent limitation at a particular monitoring point; and
- (c) \$1,500 for the third exceedance and each subsequent exceedance of the same effluent limitation at a particular monitoring point.

(2) For a violation of a monthly limit:

- (a) \$5,000 for the first exceedance of an effluent limitation at a particular monitoring point;
- (b) \$8,000 for the second exceedance of the same effluent limitation at a particular monitoring point; and,
- (c) \$10,000 for the third exceedance and each subsequent exceedance of the same effluent limitation at a particular monitoring point.

(3) For a violation of a monitoring and reporting requirement:

- (a) \$2,000 for the first violation of a monitoring and reporting

requirement at a particular monitoring point;

- (b) \$4,000 for the second violation of a monitoring and reporting requirement at a particular monitoring point; and,
- (c) \$6,000 for the third violation of a monitoring and reporting requirement at a particular monitoring point.

- b. \$2,000 per day for any failure to submit a timely and sufficient Initial CWA Compliance Report, as required by Subparagraph 6.b.
- c. \$4,000 per day that payment is late for any failure to make full and timely payment of (i) the civil penalty for past violations due under this Consent Decree, or (ii) any stipulated penalty due under this Consent Decree.

(4) For the purpose of calculating stipulated penalties pursuant to this Subparagraph 16.a.(2), an exceedance of a monthly limit shall constitute one exceedance, not thirty exceedances. However, stipulated penalties shall be assessed under both Subparagraphs 16.a.(1) and 16.a.(2) where the Facility exceeds both a daily limit and a monthly average limit for a particular parameter during a given month.

17. All stipulated penalties shall begin to accrue on the day after complete performance is due or the day noncompliance occurs, and shall continue to accrue through the day complete performance occurs or the date complete correction of noncompliance occurs. Stipulated penalties shall accrue regardless of whether EPA has made a demand for payment, but shall not be payable until a written demand for payment is made by EPA, which shall generally

describe the noncompliance for which stipulated penalties are demanded.

18. All stipulated penalties shall be due and payable to the United States within 20 days of Defendant's receipt from EPA of a demand for payment of the penalties, except as otherwise provided by Paragraph 37 in the event Defendant invokes the dispute resolution procedures under Section X (Dispute Resolution). All payments to the United States under this Section shall be made by certified or cashier's check(s) made payable to the "Treasurer, United States of America," shall be tendered to the Financial Litigation Unit of the Office of the United States Attorney for the Northern District of Ohio, and shall be accompanied by a letter indicating that the payment is for stipulated penalties under this Consent Decree, and referencing the case name and civil action number, DOJ Case No. 90-5-1-1-08201, and Defendant's name and address. Copies of the transmittal letter and check(s) shall be sent to the United States in the manner provided by Section XII (Notices and Submissions).

19. If Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of a demand for payment made by EPA.

20. Nothing herein shall preclude the simultaneous accrual of penalties for separate violations of this Consent Decree.

21. The payment of penalties shall not alter in any way Defendant's obligation to complete the performance of any tasks required under this Consent Decree.

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22. Nothing herein shall preclude the United States from seeking additional legal or equitable relief for violation of this Consent Decree or the CWA or CAA, including but not limited to injunctive relief, and civil and criminal sanctions.

23. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

#### **IX. FORCE MAJEURE**

24. A “force majeure event,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant (including its contractors, consultants, agents, and employees) that could not have been foreseen or prevented and that delays or prevents the performance of any obligation under this Consent Decree, despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (i) as it is occurring, and (ii) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Increased costs of complying with this Consent Decree or changed economic circumstances shall not constitute a force majeure event under this Consent Decree.

25. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall notify the individuals specified in Section XII (Notices and Submissions) no later than two (2) working days after Defendant knew or should have known that the event might cause a delay.

Within 10 working days thereafter, Defendant shall provide EPA a written explanation and description of: (I) the reasons for the delay, (ii) the anticipated duration of the delay, (iii) all actions taken or to be taken to prevent or minimize the delay, (iv) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay, and (v) Defendant's rationale for attributing such delay to a force majeure event, if Defendant intends to assert such a claim. Defendant shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure event. Failure to comply with the above-described requirements shall constitute a waiver of Defendant's ability to assert that the relevant event is a force majeure event.

26. Notification of any delay, in and of itself, shall not extend the time allowed for satisfying any requirement under this Consent Decree.

27. If EPA determines that circumstances which cause or may cause delay is a force majeure event, EPA will issue Defendant a written extension of the time for performance of the obligations under this Consent Decree that are affected by the force majeure event, affording Defendant such time as is necessary to complete those obligations, taking into account the duration of the delay or anticipated delay due to the force majeure event.

28. If EPA and Defendant cannot agree that a delay or failure has been caused by a force majeure event, or cannot agree on the length of an extension to account for a force majeure event, the dispute shall be resolved in accordance with Section X (Dispute Resolution) of this Consent Decree. In any such dispute resolution proceeding, Defendant shall bear the burden of demonstrating that the delay has been caused by a force majeure event, that the duration of the

delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 24 and 25.

## **X. DISPUTE RESOLUTION**

29. Unless otherwise expressly provided for in this Consent Decree, the procedures set forth in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Defendant that have not been disputed in accordance with this Section.

30. Informal Negotiations. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute. Such Notice shall describe the issue in dispute, the outcome the Party believes is appropriate, and the basis for that Party's position and shall be submitted in the manner prescribed by Section XII (Notices and Submissions) of this Consent Decree.

### **31. Formal Dispute**

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding on the Parties unless, within ten (10) days after the conclusion of the informal



negotiation period, Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including but not limited to any factual data, analysis, evidence or opinion supporting that position, and any supporting documentation relied upon by Defendant.

b. EPA shall compile and maintain an administrative record for any formal dispute. The administrative record shall include the Statement of Position submitted by Defendant pursuant to the preceding Subparagraph (including all evidence and other materials submitted with such Statement of Position), and materials relied upon by EPA in deciding the dispute pursuant to the following Subparagraph.

c. If EPA concurs with Defendant's position, EPA shall so notify Defendant in writing. If EPA does not concur with Defendant's position, EPA shall so notify Defendant in a written determination which summarizes the basis for EPA's decision. EPA's decision shall be considered binding on the Parties unless, within fifteen (15) days after Defendant's receipt of EPA's written determination, Defendant files a notice of judicial appeal setting forth a description of the matter in dispute, and the efforts made by the parties to resolve it. The United States may file a response to the notice of judicial appeal.

d. In any judicial appeal of an EPA dispute resolution determination, Defendant shall bear the burden of demonstrating that EPA's determination is arbitrary and capricious and otherwise not in accordance with law, based on administrative record compiled and maintained by EPA in accordance with Subparagraph 31.b.

e. If EPA concurs with Defendant's position, EPA shall so notify Defendant

in writing. If EPA does not concur with Defendant's position, EPA shall so notify Defendant in a written determination which summarizes the basis for EPA's decision. EPA's decision shall be considered binding on the Parties unless, within fifteen (15) days after Defendant's receipt of EPA's written determination, Defendant files a notice of judicial appeal setting forth a description of the matter in dispute, and the efforts made by the parties to resolve it. The United States may file a response to the notice of judicial appeal.

32. Stayed Payment of Stipulated Penalties Pending Resolution of Dispute. The invocation of formal dispute resolution procedures under this Section shall not extend or postpone any obligation of Defendant under this Consent Decree, but Defendant's obligations to pay stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue during proceedings to resolve disputes under this Consent Decree until the following:

a. If the dispute is resolved by informal negotiations or by a decision of EPA that is not appealed to the District Court, accrued penalties determined to be owing shall be paid to EPA within twenty (20) days of Defendant's receipt of a written demand for payment by EPA following the informal resolution or the receipt of EPA's decision.

b. If the dispute is appealed to the Court and EPA prevails in whole or in part, Defendant shall pay all accrued penalties determined by the District Court to be owed to EPA within sixty (60) days of receipt of the Court's decision, except as provided in the following Subparagraph c.

c. If the District Court's decision is appealed by any party, Defendant shall

pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Defendant to the extent that it prevails.

**XI. ACCESS TO INFORMATION AND DOCUMENT RETENTION**

33. Commencing on the date of lodging of this Consent Decree, Defendant agrees to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times, and in accordance with the Facility's ordinary procedures for safety, to the Facility, and to allow such representatives to move about, without restriction, for the purposes of conducting any activity related to this Consent Decree, including but not limited to monitoring implementation, verifying any data or information submitted to the United States under this Consent Decree, and assessing Defendant's compliance with this Consent Decree. This right of access is in addition to, and shall not limit, any access rights afforded by any law or regulation.

34. Defendant shall provide to EPA, upon request, copies of all documents and information within its possession or control (or that of their contractors or agents) relating to compliance with this Consent Decree. Defendant shall also make available to EPA its employees, agents, or representatives with knowledge of relevant facts concerning its compliance with this Consent Decree.

35. Defendant agrees that it will preserve, during the pendency of this Consent Decree and for at least one (1) year after its termination, at least one legible copy of all documents in its

possession, custody or control that relate to the performance of Defendant's obligations under this Consent Decree.

## **XII. NOTICES AND SUBMISSIONS**

36. Whenever, under the terms of this Consent Decree, written notice is required to be given or a plan, report or other submission is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree.

### **As to the United States:**

#### **For the Department of Justice:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-1-1-08201

For the EPA:

Regional Counsel(C-14J)  
U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604  
Attention: Nicole Cantello  
and  
Chief, Water Enforcement  
and Compliance Assurance Branch (WC-15J)  
U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604  
Attention: Purita Angeles

As to Defendant:

Robert M. Currie  
Vice President and General Counsel  
Detrex Corporation  
P.O. Box 5111  
Southfield, Michigan 48086

37. Defendant's Certification of Notices and Submissions. All notices and submissions required by this Consent Decree to be submitted by Defendant shall be certified by a responsible corporate official, and accompanied by the following certification:

I certify that the information contained in or accompanying this submission is true, accurate and complete. This certification is based on my personal preparation, review, or analysis of the submission, and/or supervision of persons who, acting on my direct instructions, made the verification that the submitted information is true, accurate and complete.

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38. EPA Review of Submissions. Following receipt of any plan, report, or other submission by Defendant under this Consent Decree, EPA may (but need not) do one of the following, in writing: (i) accept the submission; (ii) reject the submission, notifying Defendant of deficiencies in the submission and granting Defendant an additional thirty (30) days within which to correct the deficiencies; or (iii) reject the submission. Disputes between EPA and Defendant concerning EPA review of submissions shall be resolved in accordance with Section X (Dispute Resolution) of this Consent Decree.

### **XIII. PUBLIC COMMENT**

39. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days, for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

### **XIV. EFFECTIVE DATE AND RETENTION OF JURISDICTION**

40. This Consent Decree shall take effect upon entry by the Court; provided, however, that Defendant shall be bound upon the lodging of this Consent Decree to comply with obligations of Defendant specified in this Consent Decree as accruing upon lodging.

41. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

## **XV. CONSENT DECREE MODIFICATIONS**

42. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties and approved by the Court as a modification to this Decree. Pursuant to Paragraph 6 (Compliance Measures Section V), any deadline for submission of a report under Section V may be extended by written agreement of the Parties, without Court approval, unless the extension effects a material change to the terms of this Consent Decree.

43. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

44. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

45. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Consent Decree and economic hardship or changed financial circumstances shall not serve as a basis for modifications of this Consent Decree.

## **XVI. TERMINATION**

46. This Consent Decree shall terminate three (3) years after Defendant has completed all actions required of Defendant under this Consent Decree, provided that Defendant has been in continuous compliance with the terms of the Consent Decree for the preceding three (3) years. At such time, Defendant shall notify EPA that Defendant has completed its obligations under the Consent Decree, and has been in continuous compliance with the terms of the Consent Decree and the provisions of the CWA referenced in the Complaint for the preceding three (3) years. If

EPA agrees, the Parties shall jointly move the Court for an order terminating this Consent Decree. If EPA does not agree, the United States shall provide Defendant with written notification reflecting EPA's determination that the Consent Decree should not be terminated. If Defendant disputes EPA's determination, the dispute shall be resolved in accordance with Section X (Dispute Resolution) of this Consent Decree.

#### **XVII. SIGNATORIES/SERVICE**

47. The undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

48. Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

49. Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of Defendant with respect to all matters arising under or relating to this Consent Decree. Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons.



**XVIII. FINAL JUDGMENT**

50. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and Defendant. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

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United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in *United States v. Detrex Corporation* relating to Defendant Detrex Corporation's facility in Ashtabula, Ohio:

FOR THE UNITED STATES OF AMERICA

Date: October \_\_\_\_, 2006

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W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

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CONSENT DECREE  
*United States v. Detrex Corporation*

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_

 BHARAT MATHUR

Acting Regional Administrator

U.S. Environmental Protection Agency, Region 5

77 W. Jackson Boulevard

Chicago, IL 60604

By: \_\_\_\_\_

NICOLE CANTELLO

Assistant Regional Counsel

U.S. Environmental Protection Agency, Region 5

77 W. Jackson Boulevard

Chicago, IL 60604


CONSENT DECREE

*United States v. Detrex Corporation*

THE UNDERSIGNED PARTY enters into this Consent Decree in *United States v. Detrex Corporation* relating to Defendant Detrex Corporation's facility in Ashtabula, Ohio:

FOR DEFENDANT DETREX CORPORATION

Date: August 27, 2006

  
Robert M. Currie  
Vice President and General Counsel  
Detrex Corporation  
P.O. Box 5111  
Southfield, Michigan 48086

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Robert M. Currie  
DETREX CORPORATION  
24901 Northwestern Highway  
Suite 410  
Southfield, MI 48075

CONSENT DECREE  
*United States v. Detrex Corporation*